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Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 INRE-00 PM-07

NSC-10 SPC-03 SAM-01 SS-20 RSC-01 CIAE-00 INR-10

NSAE-00 L-03 TRSE-00 OMB-01 NEA-11 MC-02 IO-14 EB-11

DRC-01 /121 W
---------- 020318
O 311557Z JAN 74
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 0078
SECDEF WASHDC IMMEDIATE
CINCUSAREUR HEIDELBERG IMMEDIATE
CINCEUR VAIHINGEN IMMEDIATE

S E C R E T SECTION 01 OF 02 BONN 01668

E.O. 11652: GDS
TAGS: MILI, PFOR, XF, GW
SUBJECT: AMMUNITION SHIPMENTS FROM FRG

REF: (A) STATE 17339; (B) BONN 353

1. WE HAVE MET TWICE WITH PFEFFER, FONOFF NATO OFFICE DIRECTOR, ON THE AMMO SHIPMENT PROBLEM, WHO IN THE ABSENCE OF DEPUTY ASST. SECRETARY SIMON, HAS TAKEN OVER THE MATTER FOR THE FONOFF. ON JAN. 29 WE HAD A TWO-HOUR SESSION WITH PFEFFER, BRIG. GEN. BRANDT, WHO REPRESENTED THE MOD AND TAEGLICH, A MINISTRY OF TRANSPORTATION OFFICIAL, IN AN EFFORT TO SOLVE THE PROBLEM. IN THAT MEETING WE RAISED THE POINTS SET FORTH IN PARA 2 REFTEL (A), STRESSING THAT WE UNDERSTOOD THAT IN THE NEGOTIATIONS ON THE 10 MAY 1973 CONTRACT (WHICH WE UNDERSTAND TO BE THE CORRECT DATE OF THE USAREUR-MIDGARD CONTRACT NOW IN FORCE) POSSIBLE TERRORIST THREATS WERE TAKEN INTO ACCOUNT AND A SIGNIFICANT INSURANCE INCREASE WAS AUTHORIZED THE COMPANY BY USAREUR.

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2. IN ADDITION, THE AMBASSADOR RAISED THE MATTER WITH

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DEFENSE MINISTER LEBER ON JAN. 30 DURING THE COURSE OF A CONVERSATION ON OTHER MATTERS (BEING REPORTED SEPARATELY). LEBER SAID HE HAD INSTRUCTED MOD OFFICIALS, INCLUDING HIS PRINCIPAL ASSISTANT, STATE SECRETARY MANN, TO EXPEDITE THE SHIPMENT PROBLEMS. UP TO THE PRESENT TIME THE OPERATIONS HAD MOVED EFFICIENTLY AND THERE HAD BEEN NO NEWSPAPER PUBLICITY ABOUT THEM. LEBER POINTED OUT, HOWEVER, THAT MIDGARD'S REFUSAL TO HANDLE ANY MORE AMMO HAS RAISED DIFFICULT AND COMPLEX LEGAL PROBLEMS FOR GOVERNMENT OFFICIALS, WHO NATURALLY HAD TO STAY WITHIN THE FRAMEWORK OF FRG LAWS AND REGULATIONS. FOR INSTANCE, EVEN THOUGH THE FRG WAS PART STOCKHOLDER IN THE COMPANY, THE GOVERNMENT COULD NOT FORCE THE FIRM TO TAKE STEPS, SUCH AS LOAD THE AMMO FOR ISRAEL, IF ITS MANAGEMENT REFUSED. UNDUE PRESSURE AGAINST THE FIRM COULD EASILY LEAD TO ADVERSE PUBLICITY WHICH NEITHER HE, AS DEFENSE MINISTER, NOR THE GOVERNMENT COULD RISK. LEBER EXP AINED HE REGRETTED THAT THE PROBLEMS WHICH MIDGARD'S ACTION CAUSED US LIES OUTSIDE HIS MINISTERIAL COMPETENCE. STATE SECRETARY MANN HAS, HOWEVER, DONE ALL HE COULD TO MOVE THE PROBLEM TOWARD SOLUTION AND HAS HAD SEVERAL DISCUSSIONS WITH OFFICIALS AT THE TRANSPORTATION MINISTRY, BUT WITHOUT SUCCESS.

3. THE FRG WORKING GROUP DURING THE JAN 26 MEETING WAS SYMPATHETIC AND UNDERSTANDING TOWARD THE NEED TO MOVE QUICKLY TO RESOLVE THE PROBLEM. IN PARTICULAR, IT WELCOMED USG WILLINGNESS TO ASSUME AN ARRANGEMENT FOR JOINT SHARING OF CLAIMS IN THE EVENT OF A TERRORIST ATTACK WHILE THE PRESENT CONTRACT IS VALID. HOWEVER, THE SPECIFIC PROBLEM IS THAT MIDGARD REFUSES TO HANDLE ANY AMMO LOADING UNTIL IT RECEIVES ASSURANCES ALONG THE LINE OF THE STATEMENT IN PARA 3 REFTEL (B), I.E., AN ASSUMPTION BY USAREUR OR USG OF ALL LIABILITY CLAIMS MADE AGAINST IT IN CONNECTION WITH AMMO SHIPMENTS. A STATEMENT OF READINESS TO DISCUSS CLAIMS, JOINT OR NOT, IS IN OTHER WORDS INSUFFICIENT TO MEET THE FIRM'S DEMAND.

4. THE FRG IS ON THE OTHER HAND LEGALLY POWERLESS TO FORCE THE COMPANY INTO FULFILLING THE OBLIGATIONS IT

ASSUMED UNDER THE 10 MAY 1973 CONTRACT. INDEED, ACCORDING TO TAEGLICH, UNDER FRG DOMESTIC LAW, THE FIRM COULD UNQUESTIONABLY BE RELEASED FROM ITS CONTRACTUAL OBLIGATIONS BECAUSE OF THE PRESENCE OF RISKS NOT EXISTENT (IN THIS CASE TERRORIST ATTACKS) AT THE TIME THE CONTRACT WAS AGREED TO. THUS THE FRG IS POWERLESS TO MAKE MIDGARD EXECUTE THE LOADING CONTRACT AND FURTHERMORE CONSIDERS THAT DOMESTIC LAW SUPPORTS THE FIRM'S UNI-

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LATERAL ABROGATION OF THE CONTRACT.

5. IN THE COURSE OF OUR CONSULTATIONS WE ASKED THE FRG WORKING GROUP TO CONSIDER GERMAN ASSUMPTION OF THE OBLIGATIONS MIDGARD SEEKS FROM USAREUR (PARA 3, REFTEL B). THIS, WE POINTED OUT, WOULD, AS IN THE CASE OF OPERATION WILEY RUN IN JAN. 72, GIVE THE FIRM THE ASSURANCES IT

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NSAE-00 L-03 TRSE-00 OMB-01 NEA-11 MC-02 IO-14 EB-11

DRC-01 /121 W
---------- 020240
O 311557Z JAN 74
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 0079
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IT SEEKS. HOWEVER, THE FRG OFFICIALS STATED THIS WOULD REQUIRE NO LESS THAN A CABINET DECISION, A STEP WHICH WOULD NECESSITATE HIGH LEVEL CONSULTATIONS AND INVOLVE ADMINISTRATIVE DELAYS WELL BEYOND THE FEB. 14 LOADING DATE PLANNED FOR THE CORSAIR. THIS COURSE OF ACTION WAS NOT PRACTICAL AS FAR AS MEETING THE OPERATIONAL DEADLINE OF MID-FEBRUARY. THEY ALSO POINTED OUT THE GERMAN GOVERNMENT WANTED TO LEND EVERY ASSISTANCE IN SOLVING THE PROBLEM, BUT THE MATTER WAS ESSENTIALLY AN ISSUE BETWEEN A PRIVATE FRG COMPANY AND THE USG. A

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FORMAL REQUEST BY THE USG TO HAVE THE FRG ASSUME THE OBLIGATIONS FORESEEN IN PARA 3, REFTEL B, MIGHT NOT ENJOY WIDE SUPPORT IN THE CABINET.

6. WE HAVE APPARENTLY REACHED AN IMPASSE IN ATTEMPTING TO RESOLVE THE PROBLEM IN TIME FOR SHIPMENT ABOARD THE CORSAIR ON OR ABOUT FEB. 14. WE WILL WELCOME USCINCEUR COMMENTS ON THE PROBLEM, BUT IT APPEARS TO US THAT OUR OPTIONS ARE EXTREMELY LIMITED. THE EASIEST METHOD TO

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RESOLVE THE PROBLEM IS TO SHIP THE AMMO THROUGH ZEEBRUGGE. OTHERWISE, WE COULD PRESUMABLY PURSUE THE PROBLEM UNDER THE "UNUSUALLY HAZARDOUS" PROVISION OF PL 85-804, BUT WE RECOGNIZE THAT TIME MAY NOW NOT PERMIT THIS. WE UNDERSTAND THAT--AS ANOTHER ALTERNATIVE--THE SECRETARY OF ARMY MIGHT BE ABLE TO ASSUME LIABILITY WITHOUT THE ADMINISTRATIVE DELAY WE ENCOUNTERED IN THE WILEY RUN OPERATION.

7. REQUEST DEPARTMENT INSTRUCTIONS ASAP.
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